

AMENDED IN SENATE JULY 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Dutra

February 7, 2003

An act to amend Section 2948.5 of the Civil Code, and to amend Section 50204 of, and to repeal Section 50707 of, the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as amended, Dutra. Mortgage lending.

(1) Existing law provides that a borrower under a note secured by a mortgage or deed of trust on one to four residential units is not required to pay interest on a principal obligation for more than one day prior to recording of the mortgage or deed of trust.

This bill would instead provide that a borrower under these circumstances would not be required to pay interest for more than one day prior to the date that the loan proceeds are disbursed out of escrow. The bill would make other conforming changes.

(2) The California Residential Mortgage Lending Act provides for licensing and regulation of residential mortgage lenders by the Commissioner of Corporations. These provisions will be repealed on June 30, 2005.

This bill would delete the repeal provision, thereby extending the act indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. *Section 2948.5 of the Civil Code is amended to read:*

2948.5. (a) A borrower shall not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to four residential dwelling units for ~~a any period in excess of more than one day prior to recording of the mortgage or deed of trust if the date that the loan proceeds are paid into~~ *disbursed from* escrow, or, ~~if there is in the event of no escrow, the date upon which the loan proceeds have been made available for withdrawal as a matter of right, as specified in subdivision (d) of Section 12413.1 of the Insurance Code~~ *are disbursed to the borrower or on behalf of the borrower.*

(b) Interest may commence to accrue on the business day immediately preceding the day of ~~recording~~ *disbursement*, if both of the following occur:

(1) The borrower affirmatively requests, and the lender agrees, that the ~~recording~~ *disbursement* will occur on Monday, or a day immediately following a bank holiday.

(2) The following information is disclosed to the borrower in writing: (A) the amount of additional per diem interest charged to facilitate ~~recording~~ *disbursement* on Monday or the day following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by ~~recording the deed of trust~~ *disbursing the loan proceeds* on a day immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

SEC. 2. *Section 50204 of the Financial Code is amended to read:*

50204. A licensee may not do any of the following:

(a) Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the

1 commissioner for a waiver of the requirements of this subdivision
2 by demonstrating, in a letter application, that it has adopted or will
3 adopt another method of disbursement of loan proceeds that will
4 satisfy the purposes of this subdivision.

5 (b) Fail to disburse funds in accordance with a commitment to
6 make a mortgage loan that is accepted by the applicant.

7 (c) Accept fees at closing that are not disclosed to the borrower
8 on the federal HUD-1 Settlement Statement.

9 (d) Commit an act in violation of Section 2941 of the Civil
10 Code.

11 (e) Obtain or induce an agreement or other instrument in which
12 blanks are left to be filled in after execution.

13 (f) Intentionally delay closing of a mortgage loan for the sole
14 purpose of increasing interest, costs, fees, or charges payable by
15 the borrower.

16 (g) Engage in fraudulent home mortgage underwriting
17 practices.

18 (h) Make payment of any kind, whether directly or indirectly,
19 to an in-house or fee appraiser of a government or private money
20 lending agency, with which an application for a home mortgage
21 has been filed, for the purpose of influencing the independent
22 judgment of the appraiser with respect to the value of real estate
23 that is to be covered by the home mortgage.

24 (i) Engage in any acts in violation of Section 17200 or 17500
25 of the Business and Professions Code.

26 (j) Knowingly misrepresent, circumvent, or conceal, through
27 subterfuge or device, any material aspect or information regarding
28 a transaction to which it is a party.

29 (k) Do an act, whether of the same or a different character than
30 specified in this section, that constitutes fraud or dishonest
31 dealings.

32 (l) Sell more than eight loans in a calendar year made under the
33 authority of this license to a person who is not an institutional
34 investor.

35 (m) Commit an act in violation of Section 1695.13 of the Civil
36 Code.

37 (n) Make or service a loan that is not a residential mortgage
38 loan under the authority of the license.

39 (o) ~~Require a borrower to pay interest on the mortgage loan for~~
40 ~~a period in excess of one day prior to recording of the mortgage or~~

1 deed of trust. Notwithstanding the foregoing, if the borrower
2 affirmatively requests, and the lender agrees, that the recording
3 will occur on Monday, or a day immediately following a bank
4 holiday, interest may commence to accrue on the business day
5 immediately preceding the day of recording, provided the
6 following is disclosed to the borrower in writing: (1) the amount
7 of additional per diem interest charged to accommodate recording
8 on Monday or the day following a holiday, as the case may be, and
9 (2) that it may be possible to avoid the additional per diem interest
10 charge by recording the loan or deed of trust on a day immediately
11 following a business day. This disclosure shall be provided to the
12 borrower when the parties establish the recording date, and the
13 borrower shall acknowledge the additional interest charge by
14 signing the disclosure instrument. *Commit an act in violation of*
15 *Section 2948.5 of the Civil Code. Evidence of compliance with*
16 *Section 2948.5 of the Civil Code may be evidenced by (1) a*
17 *certification executed by the licensee, at no cost to the borrower,*
18 *pursuant to Section 2015.5 of the Code of Civil Procedure, or (2)*
19 *other evidence in the loan file acceptable to the commissioner.*
20 SEC. 3. Section 50707 of the Financial Code is repealed.